IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4818 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

S.H.RUPARELL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 4818 of 2003

MR KB NAYAK for M/S TRIVEDI & GUPTA for Petitioner No. 1

MR PR ABICHANDANI APP for Respondent No. 1

MR YOGESH S LAKHANI with Ms. Thakkar for Respondent No. 2

Respondent No.3 served

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 23/12/2004

ORAL JUDGEMENT

1. Heard learned Advocate Mr. K.B. Nayak for M/s Trivedi and Trivedi for the petitioners, learned APP Mr. P.R. Abichandani for respondent No.1 State and learned Advocate Ms Thakkar for respondent No.2. Respondent 3 is served. Rule. Learned APP Mr. Abichandani waives for respondent No.1 and Ms. Thakkar waives for respondent No.2. Upon request of learned counsels for the parties and having regard to the nature of this petition, petition was heard finally.

2. The present petitioners are accused Nos. 10 and 12 of Criminal Case No. 868 of 2002 filed, by respondent No.2 Complainant in the Court of learned Judicial Magistrate, First Class, Veraval, on 4th of June, 2002 under the provisions of Prevention of Food Adulteration Act, 1954 (the "Act" for short) for the offences punishable under Sections 2(ix)(k), 7(2), 7(5) and 16 of the Act and the Rules made thereunder.

3. It must be noted that original accused No. 9, 6, 7, 8, 4, 5, 11 and 13 to 19 preferred Criminal Misc. Application No. 3819 of 2003 before this Court for quashing of the Criminal Case No. 868 of 2002, and vide order dated 16th of December, 2003, this Court (Coram : Mr.R.P.Dholakia,J.) was pleased to allow that application and Criminal Case No. 868 of 2002 was quashed in respect of those petitioners.

4. Though present petitioners accused No. 10 and accused No. 12 were not petitioners to Criminal Misc. Application No.3819 of 2003, however, having regard to the nature of the proceedings and going through all the papers, this Court, in judgment dated 16th of December, 2003 in Criminal Misc.Application No.3819 of 2003, was pleased to observe in para-10 as under :

> "10. Keeping in mind the above law laid down by the Apex Court coupled with the documentary evidences annexed with the petition including Form No.32, it appears that names of persons at Sr. Nos. 4 to 19 are shown in the complaint as accused in the cause title along with their companies, out of which, accused Nos. 7, 13, 16, 17, 18 and 19 were not on the Board of Directors of the Company on the date on which alleged offence has taken place. It also appears that accused Nos.6, 7, 9 and 19 are Directors nominated by the financial institutions, accused Nos. 4, 5, 8 and 12 are non-whole time Directors of the Companies, accused No.10 is a non-executive Director stationed out of country

and accused No.11 is an alternate Director in place of original accused No.10 under the provisions of Sec.313 of the Companies Act, 1956 and accused Nos. 14 and 15 are also not in control over or connected with the day-to-day affairs of the unit at Bhuj."

5. From the above, it is clear that present petitioner No.1 i.e. original accused No.10 and present petitioner No.2 i.e. original accused No.12 were held by this Court to be non-executive Directors one of them stationed out of country and were also not in control over or connected with the day-to-day affairs of the unit at Bhuj.

6. In above view of matter, adopting all the reasonings and resorting to all the observations made by this Court in Criminal Misc. Application No. 3819 of 2003, this petition is also required to be allowed on the same grounds.

7. In the result, this petition is allowed. Complaint and process issued in Criminal Case No. 868 of 2002, Veraval, are hereby quashed and set aside qua present petitioners i.e. original accused Nos. 10 and 12. Rule made absolute to the above extent. Court below shall proceed with other accused in the said criminal case.

(J.R. Vora,J.)

p.n.nair